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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/941,612

08/30/2001

Yoshinobu Aoyagi

1794-0141P

6758

2292 7590 03/06/2008  
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EXAMINER

SONG, MATTHEW J

ART UNIT

PAPER NUMBER

1792

NOTIFICATION DATE

DELIVERY MODE

03/06/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/941,612</p>	<p><b>Applicant(s)</b> AOYAGI ET AL.</p>	
	<p><b>Examiner</b> MATTHEW J. SONG</p>	<p><b>Art Unit</b> 1792</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 04 February 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 37-48.  
Claim(s) withdrawn from consideration: 45-48.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Robert M Kunemund/  
Primary Examiner, Art Unit 1792

Continuation of 3. NOTE: Claim 37 has been amended to further require "wherein an acceptor level of said semiconductor having a deep band gap becomes shallow, since the complex probability of three atoms increases by applying the tendency that the atoms easily move around on a surface of said crystal and a molecular state acceptor which is obtained by associated two acceptors and a donor is produced.

Continuation of 11. does NOT place the application in condition for allowance because: applicant's argument regarding the finality of the rejection are not persuasive. Therefore the arguments regarding the amendment after final are not persuasive because the arguments are directed to the amendment, which was not entered.

Applicant's argument regarding the finality of the current rejection is noted but not found persuasive. Applicant alleges that applicant has not received a full action on the new claims which have been submitted in response to a decision by the Board of Appeals. When a final rejection is proper on First Action, as is the case here, is outlined in MPEP 706.07(b) [R-6], which states that the claims of an application may be finally rejected in the action immediately subsequent to the filing of the RCE where all the claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and would have been properly finally rejected on the grounds and art of record in the next office action if they had been entered in the application prior to the filing of the RCE. Here both conditions are met since the claims are drawn to the same invention of impurity doping and the same grounds and art of record was used to reject the claims. MPEP 706.07(b) also discusses situations where it would be improper to make a final first office action in an RCE application, however none of those situations is present. Therefore, the finality of the rejection is proper.

Applicant's argument regarding the restriction is noted but not found persuasive. A restriction requirement was made on 11/8/2002 and applicant orally elected to prosecute the method and withdrew the product and apparatus claims with traverse, however in the subsequent response no supposed errors in the restriction requirement were made. Applicant now alleges that the product and apparatus claims are similar to the claims under construction and no undue difficulty is involved in considering all the claims in one action. First, a serious burden exists because only the method claims have been examined for over the past 5+ years, thus the examination of the additional statutory classes of invention would be burdensome. Second, a serious burden exists in the differing issues likely to arise during the prosecution of the different statutory classes of invention.

Applicant's argument regarding the rejections under 35 USC 103 are noted but not found persuasive. Applicant's arguments are directed to the amendment, which was not entered; therefore the arguments are not persuasive.